IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEBBIE WALTERS AND MAX WALTERS,	)	
Plaintiffs,	)	
v.	)	Case No. 1:01-mc-300 (JDB/DAR)
THE PEOPLE'S REPUBLIC OF CHINA,	)	
Defendant.	)	

STATEMENT OF INTEREST OF THE UNITED STATES

Pursuant to 28 U.S.C. § 517,[1] the United States respectfully submits this Statement of Interest to advise the Court of its views with respect to Plaintiffs' request to impose monetary contempt sanctions on China for its failure to respond to court-ordered discovery.

Plaintiffs Debbie and Max Walters have spent nearly two decades trying to enforce a $9.8 million default judgment against China. As part of that effort, Plaintiffs obtained a post-judgment discovery order directing China to provide them with information about its commercial assets in the United States. China has refused to comply with that order, and Plaintiffs have asked the Court to find China in contempt and to levy fines against the Chinese government until it either comes into compliance with the discovery order or pays the underlying default judgment.

This Statement of Interest is not intended to address China's conduct in this litigation. The United States does not condone the nonpayment of valid money judgments issued by U.S.

[1] Section 517 provides that "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a

courts. Nor does it condone the outright refusal of a foreign government to participate in litigation in the United States Courts. Rather, the United States submits this Statement of Interest to address important international and domestic legal issues presented by Plaintiffs' request to impose monetary sanctions on a foreign sovereign.

BACKGROUND

In 1996, Plaintiffs obtained a $9.8 million default judgment against China in the Western District of Missouri. *See Walters v. Century Int'l Arms, Inc. et al.*, Case No. 3:93-cv-5118 (W.D. Mo.). Entered under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602 *et seq.* (FSIA), the default judgment holds China liable for the death of the Walters' teenage son due to a defective rifle.

Plaintiffs registered their default judgment in this Court in 2001, Dkt. Nos. 1-2, but took no further action in the proceeding until 2010, when they propounded post-judgment discovery requests regarding the location of China's assets in the United States, Dkt. No. 4. In January 2012, the case was referred "in its entirety" by Judge John D. Bates to Magistrate Judge Deborah A. Robinson. Dkt. No. 6 at 2. In April 2012, the United States filed a Statement of Interest addressing certain issues relating to service of process and the proper scope of post-judgment discovery in FSIA cases. Dkt. No. 9. At the Court's request, the United States filed two supplements to its Statement of Interest in November 2012 and February 2013, in which it responded to supplemental authorities filed by Plaintiffs. Dkt. Nos. 14, 16.

In February 2014, the Court entered an Order striking some of Plaintiffs' document requests as overbroad while also ordering China to produce other requested documents by April 15, 2014, and to appear before the Court for a judgment-debtor examination. Dkt. No. 24.

State, or to attend to any other interest of the United States."

China failed to appear or produce documents, and Plaintiffs asked the Court to find China in contempt for failing to comply with the Court's February 2014 discovery Order. Dkt No. 27 at 3. Plaintiffs seek monetary sanctions of $246,500 per day until China satisfies its discovery obligations or pays the underlying judgment. Dkt. No. 22-1 at 3.

In October 2014, the Court entered an Order finding that Plaintiffs "have established a basis for the court, in an exercise of its inherent power, to find Defendant in civil contempt of the court," and that the imposition of such sanctions is permissible under the D.C. Circuit's decision in *FG Hemisphere Assocs. v. Democratic Republic of Congo*, 637 F.3d 373 (D.C. Cir. 2011). Dkt. No. 27 at 6. The Court provided China with a final opportunity to comply with its February 2014 discovery order, or to show cause by January 7, 2015 "why the court should not impose the civil contempt sanctions requested by Plaintiffs." *Id*. at 8. On January 14, 2015, Plaintiffs filed a notice advising the Court that China had failed to produce documents or appear, and urging the Court to impose the requested sanctions. Dkt. No. 28.[2]

DISCUSSION

Although the D.C. Circuit has held that the FSIA does not restrict a district court's inherent authority to impose contempt sanctions against a foreign sovereign, *see FG Hemisphere*, 637 F.3d at 375, any decision to wield such authority must be consistent with the equitable

[2] Contrary to the suggestion in Plaintiffs' Proposed Order, *see* Dkt. No. 22-1 at 3, the contempt sanctions sought here cannot be imposed at the magistrate judge level. Magistrate judges do not share the civil contempt powers of the district court. *See* 28 U.S.C. § 636(e) (describing the limited circumstances where a magistrate judge can enter a contempt order). Rather, with certain exceptions not applicable here, where a magistrate judge determines that a party's conduct rises to the level of contempt, the magistrate judge certifies the relevant facts to the district court, which will hear the evidence and conduct a *de novo* determination as to whether contempt is warranted. *See id*. § 636(e)(6); *Athridge v. Aetna Cas. & Sur. Co.*, 184 F.R.D. 181, 198 (D.D.C. 1998) ("The magistrate . . . initiates the process by certifying to the district judge the facts which may constitute contempt and by issuing an order that the person whose behavior is at issue show cause before the district judge why he should not be adjudged in contempt.") (citation omitted).

principles governing civil contempt. In this case, those considerations weigh decisively against imposing monetary sanctions. The relevant considerations include (A) the unenforceability and limited utility of the sanctions order, (B) the punitive nature of the proposed sanctions, (C) the foreign policy and reciprocity concerns presented by imposing sanctions on China, and (D) the overbroad nature of the underlying discovery requests. Those considerations should guide the Court in exercising its discretion as to whether to order the sanctions requested by Plaintiffs.

A. Equitable Principles Weigh Against The Issuance of An Unenforceable Order Imposing Monetary Contempt Sanctions on China

Absent exceptional circumstances, a court "should not issue an unenforceable" order against a foreign state. *In re Estate of Marcos Human Rights Litig.*, 94 F.3d 539, 545 (9th Cir. 1996). As discussed below, the requested contempt sanctions are at odds with the purposes of the civil contempt power and the equitable principles that guide courts in exercising it.

As a preliminary matter, there does not appear to be any dispute that an order imposing monetary contempt sanctions on China would be unenforceable. Section 1609 of the FSIA provides that where a valid judgment has been entered against a foreign state, property of that state is immune from execution or attachment unless one of the statutory exceptions in sections 1610 or 1611 applies. *See* 28 U.S.C. § 1609. None of the statutory exceptions in those sections apply to allow for enforcement of an order of monetary contempt sanctions, and no other provision of the FSIA permits a court to issue an enforceable contempt order imposing monetary sanctions against a foreign state that is unwilling to pay them. *See Af-Cap, Inc. v. Republic of Congo*, 462 F.3d 417, 428 (5th Cir. 2006). Accordingly, any attempt to reduce the accrued fines to a judgment and collect them through the execution of Chinese assets would be foreclosed by the FSIA.

The most immediate problem with an unenforceable contempt order is that it does nothing to further the purposes of civil contempt. A civil contempt sanction may serve either to "coerce the defendant into compliance with the court's order, or [to] compensate the complainant for losses sustained." *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 829 (1994) (citation omitted). Although a district court has discretion in fashioning a contempt remedy, *Armstrong v. Exec. Office of the President, Office of Admin.*, 1 F.3d 1274, 1289 (D.C. Cir. 1993), "a court is obliged to use the least possible power adequate to the end proposed," *Spallone v. United States*, 493 U.S. 265, 276 (1990) (citation omitted). In this regard, courts are advised to consider "the probable effectiveness of any suggested sanction in bringing about [compliance]." *Paramedics Electromedicina Comercial, Ltda v. GE Med. Sys. Info. Technologies, Inc.*, 369 F.3d 645, 657-58 (2d Cir. 2004).

It seems apparent that imposing monetary sanctions on China would not further the purposes of civil contempt. An unenforceable sanctions order would not be an effective way to coerce China to comply with the Court's discovery order, much less to compensate Plaintiffs for any injuries they have sustained as a result of China's noncompliance. *See Edeh v. Carruthers*, No. 10-2860, 2011 WL 4808194, at *4 (D. Minn. Sept. 20, 2011) (observing that defendant's "complete failure to respond to plaintiff and to the Court indicates that financial consequences would have no effect on [defendant's] willingness to comply with the Court's order").

As discussed below, *see infra* Section C, given that other countries generally view it as inappropriate to impose penalties on foreign sovereigns for failing to comply with a court order, it would be exceedingly rare for *any* foreign state to voluntarily pay a contempt sanction. But the prospect of voluntary compliance is all the more remote in this case, where China has been steadfast in its refusal to participate in the litigation or to comply with orders of the Court. *See*

Notice to Court, Dkt. No. 10 ("China . . . has never accepted the jurisdiction of US courts. Neither has China ever accepted the so-called default judgment against it entered by the US court in 1996."). Rather, China's consistent position that it is absolutely immune virtually ensures that any attempt by Plaintiffs to collect the fines would be met by the same response they have met in attempting to execute the underlying damages award.

For similar reasons, a decision to levy fines on China necessarily would discount the "probable effectiveness" of the contempt remedy, *Paramedics*, 369 F.3d at 657-58, and certainly would not represent "the least possible power adequate to the end proposed," *Spallone*, 492 U.S. at 276. As discussed below, *see infra* Section C, while any contempt sanction imposed on a foreign state would prove worrisome from a foreign policy standpoint, a sanction against a foreign state that for some reason were willing to voluntarily comply at least could be said to serve the functions of the contempt power. But there is nothing to recommend a contempt sanction that is all but certain to be ignored by a foreign state. *See In re Estate of Marcos*, 94 F.3d at 548 (holding that the district court abused its discretion by issuing a "futile injunction" against a foreign state); *see also Virginian Ry. Co. v. Sys. Fed'n No. 40,* 300 U.S. 515, 550 (1937) ("[A] court of equity may refuse to give any relief when it is apparent that that which it can give will not be effective or of benefit to the plaintiff."). Such a sanction would not achieve its intended purpose, and any negligible utility it may have would almost always be outweighed by its costs.

B. The Proposed Monetary Contempt Sanctions Are Punitive in Nature and Inconsistent with the FSIA

As noted above, civil contempt sanctions may serve either to coerce compliance with an order or compensate a party for loss; they may not be designed to punish. *Landmark Legal Found. v. E.P.A.*, 272 F. Supp. 2d 70, 76 (D.D.C. 2003). Moreover, in the context of contempt

proceedings involving foreign sovereigns, sanctions that are punitive in nature run afoul of the FSIA's ban on imposing punitive damages on foreign states. 28 U.S.C. § 1606 ("[A] foreign state . . . shall not be liable for punitive damages . . . ."). The monetary fines sought here ($246,500 per day, to be paid to the Walters, until China satisfies its discovery obligations or pays the final judgment, Dkt. No. 22-1 at 3) bear several hallmarks of a punitive contempt sanction.[3]

First, although Plaintiffs have requested that the monetary sanctions be payable directly to them as opposed to the Court, Dkt No. 22-1 at 3, it seems clear that the requested amount has no relation to any damages they may have incurred as a result of China's noncompliance with the discovery order. While a court may order a civil contemnor to compensate the injured party for losses caused by the violation of the court order, *Landmark Legal Found.*, 272 F. Supp. 2d at 76, such compensatory sanctions should "correspond at least to some degree with the amount of damages," and "proof of loss must be present to justify its compensatory aspects," *Paramedics*, 369 F.3d at 658 (citation omitted); *see also Landmark Legal Found.*, 272 F. Supp. 2d at 76 (observing that compensatory contempt sanctions often consist of "reasonable costs (including attorneys' fees) incurred in bringing the civil contempt proceeding.").

Plaintiffs' proposed contempt sanctions have none of these features. Plaintiffs have made no effort to tie the requested amount to any actual damages they may have incurred as a result of

[3] Plaintiffs have also requested that China's noncompliance with the discovery order be deemed a waiver "under 28 USC Sections 1610(a)(1) and 1610(b)(1) of any and all immunity from attachment in aid or execution or from execution on property in the United States used by the PRC or its agencies or instrumentalities in commercial activities . . . ." Dkt. No. 22-1 at 3. Such a waiver, however, could not be squared with the FSIA. *See* 28 U.S.C. § 1610(b)(1) (providing that there is no immunity from execution where the agency or instrumentality has waived its *own* immunity); *see also Walters v. Indus. & Commercial Bank of China, Ltd.*, 651 F.3d 280, 295-96 (2d Cir. 2011) (rejecting a similar request by Plaintiffs to infer a waiver by China of its immunity from execution based on China's refusal to participate in litigation).

China's noncompliance with the discovery order. *See N.Y. State Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1353-54 (2d Cir. 1989) (holding that the district court abused its discretion by making contempt sanctions payable directly to plaintiffs). Moreover, Plaintiffs have not suggested that any fines they may collect as a result of the contempt order would offset the amount owed by China under the final judgment. Rather, Plaintiffs request that they be paid the monetary contempt fines in addition to the amount of the outstanding final judgment.

Second, Plaintiffs have failed to present evidence as to what it would take to ensure China's compliance with the discovery order. *Autotech Techs. v. Integral Research & Dev. Corp.*, 499 F.3d 737, 751-52 (7th Cir. 2007) (holding that it was an abuse of discretion to order contempt fine against foreign government instrumentality in the absence of evidence that the requested fines were calibrated to actual losses or the prospect of coercing compliance). Plaintiffs contend that the requested sanctions are reasonable in light of the amount of the sanctions imposed against Russia in the *Chabad* litigation ($50,000 per day), *see Chabad v. Russian Fed'n*, 915 F. Supp. 2d 148, 153-55 (D.D.C. 2003), and the relative size of China's economy ("the *Factbook* ranks China third . . . well above the Russian Federation, which is ranked seventh"). *See* Dkt. No. 15 at 3. But this rough approximation is a poor substitute for actual evidence. The discovery-related sanctions requested here would surpass not only the sanctions imposed in *Chabad*, but also other monetary contempt sanctions that have been imposed on foreign sovereigns in the past. *See FG Hemisphere*, 637 F.3d at 376 ($5,000 per week payable to plaintiff doubling every four years until reaching a maximum of $80,000 per week); *Chabad*, 915 F. Supp. 2d at 153-55 ($50,000 per day to plaintiff); *Af-Cap*, 462 F.3d at 428-29 ($10,000 per day to the court). For these reasons, it would be difficult to square these extraordinary fines with the FSIA's categorical ban on punitive damages against a foreign state.

C. The Proposed Sanctions Raise Significant Foreign Policy Concerns

The United States has significant foreign policy concerns about Plaintiffs' pursuit of contempt sanctions in this matter. Most immediately, there is a risk that contempt sanctions will create diplomatic tension between the United States and China, complicating foreign relations and risking adverse consequences for U.S. interests in Chinese courts. A finding of civil contempt is a declaration that a sovereign has behaved in a manner worthy of sanction. *Cf. In re Papandreou*, 139 F.3d 247, 251 (D.C. Cir. 1998) (noting that contempt order against senior Greek official "offends diplomatic niceties even if it is ultimately set aside on appeal."). As such, it is likely to be received by the foreign state as punitive and an affront to its sovereign immunity, and may even embolden the foreign state to respond in kind. The United States is cognizant of the D.C. Circuit's statement that "sensitive diplomatic considerations[,] . . . if reasonably and specifically explained[,]" could influence a court's consideration of whether to impose sanctions against a foreign sovereign. *FG Hemisphere*, 637 F.3d at 380. *See also Republic of Austria v. Altmann*, 541 U.S. 677, 702 (2004) (stating that foreign policy is an area where deference is owed to "the considered judgment of the Executive"); *Sosa v. Alvarez-Machain*, 542 U.S. 692, 733 n. 21 (2004) (observing that "there is a strong argument that federal courts should give serious weight to the Executive Branch's view of the case's impact on foreign policy").

Although the very sensitivities of diplomatic considerations make them difficult to air in public, these concerns are not "generic." *Cf. FG Hemisphere*, 637 F.3d at 380. By way of illustration, in *Chabad*, the district court imposed monetary contempt sanctions of $50,000 per day against Russia with the aim of coercing Russia to comply with an order directing Russia to return a collection of religious books and other documents to the plaintiff. *See* 915 F. Supp. 2d

at 153-155. Rather than bringing Russia into compliance, the sanctions order created an additional hurdle to the United States' efforts to resolve the dispute. *See* Statement of Interest of the United States, *Chabad*, No. 1:05-cv-01548-RCL, Ex. A, at 2 (D.D.C. filed Feb. 21, 2014). Moreover, in response to the sanctions order, the Russian Ministry of Culture and the Russian State Library filed a lawsuit against the United States in Moscow. The suit named the United States and the Library of Congress as defendants and requested a court order directing the defendants to return to Russia seven books that had been loaned to the Library of Congress from the *Chabad* collection and imposing a $50,000 daily fine for each day of noncompliance. Judgment was entered, including the fine, which continues to accrue. *See* Decision, Case No. A40-82596/13, slip op. at 11 (Comm'l Ct. of Moscow May 29, 2014) (Russ.).

This is not to say that China will take the same approach that Russia did in *Chabad*. But *Chabad* does illustrate that the imposition of contempt sanctions can have negative consequences for the United States, while doing nothing to improve the position of the complainant. China already has expressed its "grave concern [of] the negative consequences that the case will cause if it continues to develop," Dkt. No. 10 at 1, and a judicial declaration that China's conduct is worthy of sanction, accompanied by an order levying daily fines on the Chinese Government until the conduct is corrected, is not likely to support friendly bilateral relations.

International practice also weighs against an order of monetary contempt sanctions against China. In enacting the FSIA, Congress sought to adhere closely to accepted international practice and standards relating to sovereign immunity. *See Stephens v. Nat'l Distillers & Chem. Corp.*, 69 F.3d 1226, 1234 (2d Cir. 1995) (stating that the FSIA "was primarily codifying pre-existing international and federal common law."). It is therefore appropriate to consider foreign and international legal norms, as well as the potential ramifications for the United States if U.S.

courts deviate from such norms, in adjudicating cases arising under the FSIA. *See, e.g.*, *Aquamar, S.A. v. Del Monte Fresh Produce N.A., Inc.*, 179 F.3d 1279, 1295 (11th Cir. 1999).

As the United States has discussed at length in previous submissions,[4] the European Convention on State Immunity and the United Nations Convention on Jurisdictional Immunities of States and Their Property generally prohibit the imposition of monetary sanctions based on a foreign state's conduct in judicial proceedings. *See* European Convention on State Immunity, art. 18, May 16, 1972 E.T.S. No. 74, 11 I.L.M. 470 (1972); United Nations Convention on Jurisdictional Immunities of States and Their Property, art. 24(1), G.A. Res. 59/38, annex, Dec. 2, 2004, 44 I.L.M. 803 (2005). Indeed, under the European Convention, this bar expressly applies to monetary sanctions imposed on a foreign state for "its failure or refusal to disclose any documents or other evidence." European Convention, art. 18-Point 70. Although the United States is not a party to either convention, the conventions reflect international practice and legal norms regarding foreign state immunity, and similar bars on monetary sanctions have been adopted by numerous nations that have codified the restrictive view of sovereign immunity law, including Canada, the United Kingdom, and Australia. *See*, *e.g.*, Canadian State Immunity Act, §§ 12(1), 10(1); United Kingdom State Immunity Act, § 13; Australian Foreign States Immunities Act of 1985, § 34. The United States, as a defendant to foreign proceedings, has benefitted from the international practice prohibiting such sanctions against sovereigns. While foreign courts for the most part have followed accepted international practice and not allowed monetary contempt sanctions against other sovereigns, orders of U.S. courts imposing monetary

[4] *See* Brief for the United States of America as *Amicus Curiae* at 12-15, *Servaas, Inc. v. Iraq*, No. 14-385(L) (2d Cir. Sept. 9, 2014); Brief for the United States as *Amicus Curiae* at 9-10, *FG Hemisphere Assoc. v. Democratic Republic of Congo*, No. 10-7046 (D.C. Cir. Oct. 7, 2010).

sanctions on foreign states may embolden foreign courts to impose similar sanctions on the United States.

The *FG Hemisphere* court discounted these examples of international practice as "irrelevant" to whether contempt sanctions are available under the FSIA. 637 F.3d at 380. But the question here is not whether the Court has authority to impose contempt sanctions; rather, the question is whether such authority should be exercised in this case. In considering that question, including the likelihood that China will comply, it is appropriate to account for the manner in which comparable orders are received under foreign and international law. *See, e.g.*, *De Letelier v. Republic of Chile*, 748 F.2d 790, 798 (2d Cir. 1984) (examining European Convention on State Immunity and United Kingdom's immunity statute in construing the FSIA's executional immunity provisions). Indeed, China's repeated appeals to international law and practice in its notices to the Court suggest that these concerns are particularly salient here. *See* Dkt. Nos. 10, 25. Thus, foreign policy considerations weigh against the sanctions that Plaintiffs propose in this case.

D. The Proposed Sanctions Are Unwarranted in Light of The Scope of The Overbroad Discovery Order

A final factor weighing against contempt sanctions is the overly broad nature of the underlying discovery order. The Court has ordered China to provide Plaintiffs with information on what appears to be every commercial asset owned directly or indirectly by the Chinese government in the United States. Dkt. No. 24. The United States has previously taken the position in this case that such "broad, general-asset discovery" is inconsistent with the FSIA. *See* Dkt. No. 9 at 5. Although the Supreme Court has since held that the FSIA does not immunize foreign sovereigns from post-judgment discovery, *see Republic of Argentina v. NML Capital Ltd.*, 134 S. Ct. 2250 (2014), the Court explained that "other sources of law ordinarily

will bear on the propriety of discovery requests of this nature and scope, such as settled doctrines of privilege and the discretionary determination by the district court whether the discovery is warranted." *Id.* at 2258 n.6 (internal quotation marks omitted). The Court also recognized that foreign sovereigns may be able to obtain relief from post-judgment discovery to the extent the discovery is directed to "information that could not lead to executable assets in the United States or abroad . . . ." *Id*. at 2257. Because the scope of the Court's discovery order permits plaintiffs to seek information that is not relevant to their ability to execute their judgment, the Court should be extremely cautious about imposing monetary contempt sanctions on China. *See FG Hemisphere*, 637 F.3d at 379 & n.3 (noting, without addressing, the United States' "serious[]" concerns about a district court imposing sanctions for non-compliance with overbroad discovery). Even as narrowed by the Court, the requests at issue here are overbroad in a number of respects:

1. Plaintiffs obtained the judgment against China under the commercial activities exception, 5 U.S.C. § 1605(a)(2). The only potentially relevant exception to China's attachment immunity is 5 U.S.C. § 1610(a)(2), under which China's property in the United States is not immune from execution if it "is or was used for the commercial activity upon which the claim is based . . . ." Thus, in this case discovery requests relating to China's commercial property in the United States are relevant only to the extent they concern assets used in connection with the sale and distribution of firearms. But Plaintiffs' requests are not limited to the commercial activity "upon which the claim is based." Document request 4, for instance, seeks documents identifying property in the United States owned by China "that is or at any time was used by the PRC for a commercial activity in the United States." Dkt. No. 22 at 18. Document requests 11 and

12, which seek information relating to "commercial activity" in general, are similarly overbroad. *Id*. at 4.

2. Plaintiffs' discovery requests are inconsistent with the principle that "government instrumentalities established as juridical entities distinct and independent from their sovereign should normally be treated as such." *See First Nat'l City Bank v. Banco para el Comercio Exterior de Cuba*, 462 U.S. 611, 626-27 (1983). Document request 6, for instance, seeks "[a]ll documents identifying property . . . of every PRC agency and instrumentality engaged in a commercial activity in the United States." Dkt. No. 22 at 19. Similarly, document request 11 seeks "[a]ll documents, including bank statements, identifying Bank Accounts and Financial Accounts in the United States currently directly or *indirectly* controlled by the PRC . . . used for a commercial activity in the United States." *Id*. at 19 (emphasis added). The assets of a separate juridical entity cannot be executed against to satisfy a judgment against the foreign state unless "the party seeking attachment carrie[s] its burden of demonstrating that the instrumentality's separate juridical status [i]s not entitled to recognition," *Walters v. Indus. & Commercial Bank of China, Ltd.*, 651 F.3d 280, 298 (2d Cir. 2011) (quoting *EM Ltd. v. Republic of Argentina*, 473 F.3d 463, 477 (2d Cir. 2007)). Plaintiffs, who are bound by this ruling, have not alleged, much less made a showing, that any of China's agencies or instrumentalities are liable for its judgments as alter-egos.

3. There are still other problematic aspects of the discovery requests. For instance, Plaintiffs seek "[a]ll documents identifying property, including *money*, in the United States currently owned by the PRC that is *or at any time was* used by the PRC for a commercial activity in the United States." Dkt. No. 22 at 18 (emphasis added). Setting

aside the expansive scope of the request, it is not clear how Plaintiffs or the Court reasonably could expect China to trace its prior uses of a fungible commodity like money.

The overbreadth of the information that Plaintiffs seek thus provides another reason why the Court should proceed cautiously with respect to Plaintiffs' request for sanctions.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court consider the issues set forth above in evaluating Plaintiffs' request for contempt sanctions against China.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on August 25, 2015, a copy of the foregoing document was served upon counsel of record by electronic means through electronic filing:

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